

REMARKS

Claims 1-3, 6, 7, 10, 11, 13, 14, 16 and 22-26 are rejected under 35 U.S.C. § 102 (e) as allegedly anticipated by U.S. Patent No: 6,153,402. This rejection is respectfully traversed.

Claims 1, 3, 13, 14, 16, 20, 22-26 have been amended as shown above, preserving all rights to refiling the claims as previously written before these amendments in a future application. Claims 27-32 have been added. Claims 4, 5, 8, 9, 12, 15, and 17-19 have been previously canceled without prejudice to future filing. Claim 2 is canceled herein without prejudice to future filing.

Claim 1 has been amended to recite DNA encoding a protein comprising the amino acid sequence 1 through 417 of SEQ ID NO: 2 and 1 through 411 of SEQ ID NO: 6. Claim 3 has been amended to recite a DNA molecule encoding a polypeptide comprising an amino acid sequence having at least about 98% identity to amino acids 1 through 417 SEQ ID NO: 2, where the polypeptides are capable of inducing apoptosis. Claim 16 has been amended to recite the polypeptides comprising the amino acid sequence 1 through 417 of SEQ ID NO: 2, and 1 through 411 of SEQ ID NO: 6. Claim 26 has been amended to recite an isolated polypeptide comprising an amino acid sequence having at least 98% identity to amino acids 1 through 417 of SEQ ID NO: 2 wherein the polypeptide is capable of inducing apoptosis. Claims 20, 22- 25 have been amended to more clearly recite the subject matter considered to be the invention. Claim 20 recites an antibody immunoreactive with a polypeptide comprising the amino acid sequences of SEQ ID NO: 2 and 6 respectively. Basis for the amendments to the claims are found in the specification, and in the claims as originally filed. Therefore, no new matter is added, and entry of the amendments to the claims is respectfully requested.

Claims 27 through 32 have been added. Claim 27 has basis in the specification, page 5 through page 7, and pages 20-21, for example. Claim 28 has basis in the specification on page 6 and pages 20-21, for example. Claims 29 and 30 have basis in the specification on page 5 and page 19, for example. Claim 31 has basis in the specification on page 5, and 20-21, for example, and Claim 32 has basis in

the specification on page 5 and 6, and pages 20 through 21. Therefore, no new matter is added and entry of the new claims is respectfully requested.

U.S. Patent No: 6,153,402 ('402 patent), (filing date of March 11, 1997) describes the DR3-V1 polypeptide, having 428 amino acids as set forth in SEQ ID NO: 2 of the '402 patent, and is first described in provisional application 60/013,285 having a filing date of March 12, 1996. The DR3 polypeptide has 417 amino acids as set forth in SEQ ID NO: 4 of the '402 patent, and is first described provisional application 60/028,711, having a filing date of October 17, 1996. The instant application has a filing date of October 3, 1997 with a priority date of October 4, 1996 (provisional application 60/044,456).

The Examiner has stated that DR3-V1 has an amino acid sequence which is approximately 97.6 % identical (paper 13, page 3) to SEQ ID NO: 2 of the present application. SEQ ID NO: 6 of the present application is the murine homolog and is not described in U.S. Patent No; 6,153,402 nor its priority documents. SEQ ID NO: 6 has approximately 65% homology to DR3-V1 and DR3.

The claims have been amended as shown above to recite polypeptides comprising SEQ ID NO: 2 or SEQ ID NO: 6, DNA encoding polypeptides comprising SEQ ID NO: 2 or SEQ ID NO: 6, and particular fragments of the SEQ ID NO: 2, and DNA encoding these particular fragments, as well as vectors, host cells, and process involving these polypeptides and DNA. Applicants submit that neither SEQ ID NO: 2 nor 6, nor particular fragments of SEQ ID NO: 2, are described in the March 12, 1996 provisional application 60/013,285, the priority document describing DR3-V1. SEQ ID NO: 2 of the instant application is described in the provisional application having a filing date of October 4, 1996 which predates the October 17, 1996 filing date of the provisional application describing the DR3 polypeptide. Therefore, the grounds for the rejection of the claims under 35 U.S.C. § 102(e) --that the invention is described in a patent granted on an application by another filed in the United States before the claimed invention of the Applicants-- has not been met. Since the priority document describing the DR3 polypeptide was filed after the filing date of provisional application describing polypeptides comprising SEQ ID NO: 2 and

USSN 08/943,776
Amendment and Response

related inventions, Applicants request that the rejection of the claims on the basis of 35 U.S.C. § 102(e) be withdrawn.

Finally, Applicant wishes to draw the Examiner's attention to U.S. Patent No: 6,462,176 and US2002/0192729A1.

CONCLUSION

Entry of the amendments to the claims and the new claims is respectfully requested. Based on the amendments to the claims, and the arguments presented above, Applicants request that the rejection of the claims on the basis of 35 U.S.C. § 102 (e) be reconsidered and withdrawn and request the allowance of the claims as amended above.

Applicants' attorney invites the Examiner to call her at the number below if it would be helpful in advancing the prosecution of this application.

Respectfully submitted,



Christine Bellas

Immunex Corporation
51 University Street
Seattle, WA 98101
Telephone (206) 265-6294

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date appearing below.

November 26, 2003
Date

Camille Stewart
Signature